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ANNOUNCEMENTS

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President's Page

TO THE MEMBERSHIP:

The Louisiana State Bar Association has recently assumed its responsibility in the field of law reform. The new 27-man Committee on Law Reform, under the leadership of Eberhard P. Deutsch as Chairman and Ben R. Miller as Vice Chairman, has prepared, for consideration by the House of Delegates, the following proposed legislation:

(1) *Establishment of procedure for appeals in all misdemeanor cases* —Under present law, a person convicted of a misdemeanor in a District Court and sentenced to a fine of $300.00 or less or to a jail term up to six months, has no appeal. This seems contrary to accepted ideas of justice, particularly since a person receiving the same sentence in a City Court has an appeal to the District Court.

(2) *Provision for complete records of proceedings in all criminal cases, to be transcribed in event of appeal—*

Under present law, no record is made, even in capital cases, unless the accused has the means to pay for it himself. This contrasts with the practice in civil cases, in which complete transcripts are always made, even when only a few hundred dollars are involved. It is true that appeals in criminal cases are only on questions of law; but no question of law can be determined in the abstract, without regard to the factual context in which it arose. The legality of a prosecution, for example, depends on whether the District Attorney stated every essential fact of his case in his opening statement; but how can this be determined with certainty if the opening statement was not transcribed? In a homicide trial, admissibility of evidence of the deceased's bad character depends on whether sufficient evidence of a hostile manifestation on his part has been presented. Again, a transcript is necessary to decide the question on appeal.

(3) *Authorization for local establishment of fair procedures for provision of counsel for indigent accuseds—*

Louisiana, in common with other Southern states, has unstandardized and haphazard procedures in this regard. In Orleans Parish, there is, in effect, a Public Defender's office, financed by the United Fund. Elsewhere in the State, private practitioners are assigned to defend indigents without compensation. In some districts, all members of the local Bar, whether or not experienced in criminal practice, are regularly assigned. In others, the entire burden falls on the relatively few lawyers who specialize in criminal law. The bill proposed by the Committee would authorize each Parish to adopt whatever procedure—public defender, private coun-

sel, assigned counsel—is best adapted to its needs, with compensation for the defender in every case paid by the State. This system is both flexible and fairer than the present system to both the indigent accuseds and their counsel.

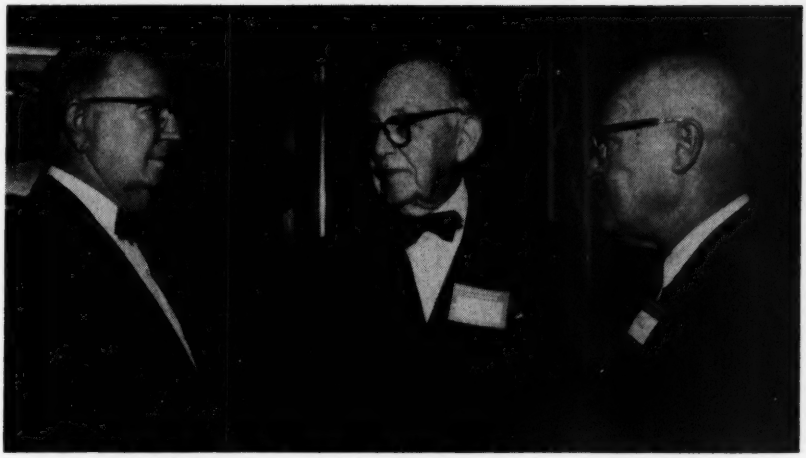
(4) *Provision for waiver of the State's sovereign immunity*— In 1959, the Supreme Court of Louisiana held, on the basis of a 1946 amendment of the Constitution, that the Legislature is no longer empowered to waive the State's immunity. The two cases in which the ruling was made were tort cases; but the holding is equally applicable to contract claims and, presumably, also to tax-refund, workmen's-compensation, and other types of claims against the State and other public bodies, except for expropriation. This situation obviously calls for reform, and the Committee is proposing two alternative legislative packages. One simply authorizes the Legislature to waive the immunity, as before. The other, more in keeping with the modern trend, waives the immunity generally, except as to civil rights litigation.

On the opening day of the annual convention, May 5, 1960, the period from 2:00-4:00 p.m. has been set aside for an open hearing before the Committee on the subjects outlined, and any other matters the membership would like to have considered. I urge the membership to attend this meeting.

Sincerely,

F. A. Blanche,
President.

Fred A. Blanche Sr., (left), Baton Rouge, president of the Louisiana State Bar Association, is presented a plaque by John D. Randall, president of the American Bar Association, in recognition of the Louisiana State Bar Association having better than 60 per cent of its members of the American Bar Association. The presentation was made at a special ceremony Feb. 21 before the National Conference of Bar Presidents in Chicago.



THREE PRESIDENTS who delivered addresses at the 19th annual meeting of the Louisiana State Law Institute in New Orleans March 25 were (from left) Fred A. Blanche, Sr., Baton Rouge, president of the Louisiana State Bar Association; John H. Tucker, Jr., Shreveport, Law Institute president, and Eugene D. Saunders, president of the New Orleans Bar Association.

—Leon Trice Photo.

Law Institute Meeting

The projet of the completely revised Code of Civil Procedure was introduced at the 19th annual meeting of the Louisiana State Law Institute in New Orleans, March 25-26. The new code will be presented to the state legislature in May.

If enacted, the new code will simplify much of the procedure in the state's civil courts and will reduce the number of articles in the present code from approximately 1160 to approximately 600.

John H. Tucker, Jr., Shreveport, president of the Law Institute, presided at the opening session which featured an address by Chief Justice John B. Fournet of the Louisiana Supreme Court. Other speakers at that session were Fred A. Blanche, Sr., Baton Rouge, president of the Louisiana State Bar Association; Eugene D. Saunders, president of the New Orleans Bar Association; and J. Denson Smith and Henry G. McMahon, both of Baton Rouge, director and coordinator, respectively, of the Law Institute.

LeDoux R. Provosty, Alexandria, and Walter J. Suthon, Jr., New Orleans, vice-presidents of the Law Institute, presided at other sessions. Speakers included Dean Paul M. Hebert of the L.S.U. school of law; Dean A. E. Papale of the Loyola University school of law; Augusto P. Miceli, chairman of the L.S.B.A.'s section on international, comparative and military law; and Professors of Law Leon Sarpy and Adrian G. Duplantier, Loyola, Leon D. Hubert, Jr., and Leonard Oppenheim, Tulane, and Dale E. Bennett, L.S.U.

The Background, Structure, and Composition of the Louisiana Code of Civil Procedure

Henry G. McMahon

THE BACKGROUND

Though France claimed the vast Louisiana territory as early as 1682, no civil government worthy of the name was established until 1712, when the colony was granted to Crozat. Under the latter's charter, it was provided that the Custom of Paris — that most interesting combination of Germanic custom and Roman law which had been codified in the sixteenth century — should be in effect throughout the territory. Until the Spanish took actual possession of Louisiana under the cession of 1762, the Custom of Paris continued to be the basic private law of the colony, modified slightly from time to time by royal ordinances.

Colonial Period

The judicial system of Louisiana may be said to have been founded during the Crozat administration, with the establishment of the Superior Council as the first court of the territory. The procedure employed in civil cases in the Superior Council was based primarily upon the four titles of the Custom of Paris relating to real actions, actions generally, arrests and executions, and the seizure and sale of movables. Otherwise, the procedure applicable was that employed in cases before the Châtelet of Paris. From an examination of Pigeau's work on the subject, it appears that the procedure of the Châtelet was based largely upon Louis XIV's famed Civil Ordinance of 1667, generally regarded as the foundation of the present French Code of Civil Procedure.

Few lawyers were to be found in the colony at this time, and little litigation occurred during this period of French dominion. This procedural system thus failed to make any lasting impression on the small population, with the result that French civil procedure had to accept a subordinate role in shaping the adjective law of Louisiana.

Under the secret Treaty of Fontainebleau in 1762, France ceded the entire Louisiana territory to Spain, but it was not until 1769 that the latter was able to take actual possession. In that year, Don Alexander O'Reilly occupied the territory with a strong Spanish force, and firmly established Spanish rule over the colony. His first official acts were proclamations issued in the name of His Most Catholic Majesty, abolishing the colonial government, establishing the new Spanish Province of Louisiana, abrogating French law in the colo-

Mr. McMahon is professor and sometimes dean of the Louisiana State University school of law, and coordinator and reporter for the Code of Practice Revision Project, Louisiana State Law Institute.

ny, and providing a short code of laws for the people. This code was intended only for temporary use, and only until the colonists could become more familiar with the laws of Spain. Annexed to the "code" embodied in O'Reilly's Proclamation was a set of "instructions as to the manner of instituting suits, civil and criminal, and of pronouncing judgments in general," compiled by two of the Spanish lawyers on O'Reilly's staff. The headnote thereon evidences the fact that both O'Reilly's "code" and the instructions annexed thereto were based upon the *Recopilacion de las Indias,* the great digest of the laws and regulations by which Spain governed its colonial empire, and the *Recopilacion de Castilla,* both of which contained references to the earlier Spanish codes, including the monumental *Codigo de las Siete Partidas.*

From the numerous citations of these Spanish codes by the courts of Louisiana during the initial period of American dominion, it seems reasonable to conclude that the colonial lawyers of that period were completely familiar therewith. The same evidence indicates that the works of Gregario Lopez, of Hevia Bolaños, and of Febrero likewise were available, and were accepted as authoritative in procedural matters during the Spanish regime. Although Spain held the colony for little more than a third of a century, its procedural law played an extremely important role in shaping the subsequent civil procedure of Louisiana.

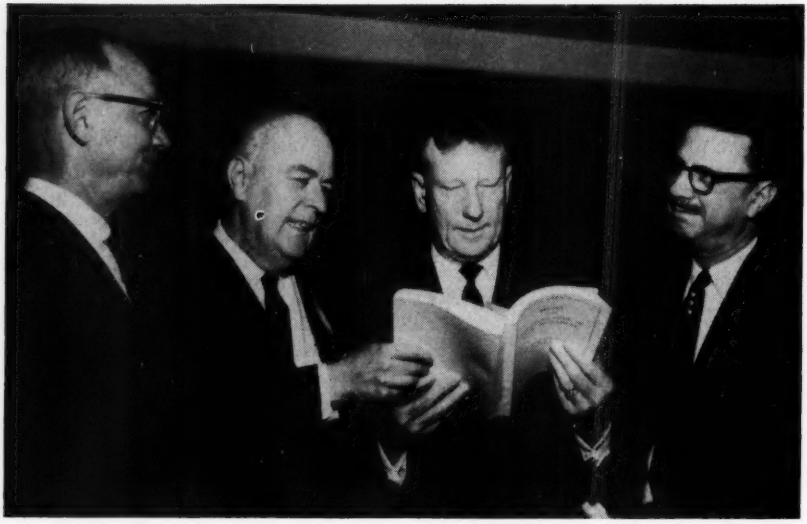
Under the secret tready of San Ildefonso in 1800, Spain retroceded the Louisiana territory to France. The latter, however, made no effort to regain possession of the colony until late in 1803. Prior to taking possession, France sold the entire territory to the United States of America, which assumed control thereon on December 20, 1803.

As France exercised sovereignty over the colony in this period for less than a month, no effort was made to abrogate the Spanish laws then in force. Three acts of the Congress of the United States affecting the Territory of Orleans were passed during the first two years after the Louisiana Purchase. The first left unchanged all of the laws then in force, simply vesting the administrative power in different officers. The second and third of these Congressional acts reorganized the territorial government to conform to the American pattern, provided for the writ of habeas corpus and for trial by jury, but expressly declared that all laws in force should continue in effect until changed by subsequent legislation.

The Legislative Council of the Territory of Orleans, empowered by Congress to legislate for this portion of the new American possession made more significant changes almost immediately. The Crimes Act of 1805 defined a large number of felonies and misdemeanors, repealed all prior criminal legislation, recognized the accused's right to a trial by jury, and provided that such trial should be conducted according to the common law of England. The most important of these early territorial statutes, subsequently known as the Practice Act of 1805, recognized the Superior Court of the territory, previously established in New Orleans by the territorial governor, and provided a simple procedure for the trial of cases therein.

The Practice Act of 1805 merits consideration here for at least two reasons. Firstly, it was the handiwork of the distinguished Edward Livingston, who, ruined financially by the defalcations of a subordinate while holding the office of Mayor of the City of New York, emigrated to Louisiana to regain his fortune, subsequently became an enthusiastic convert to the civil law, and led the fight for codification. Secondly, important segments of the Louisiana Code of Practice of 1825 were taken bodily from the 1805 legislation.

The most radical changes made in the civil procedure of Louisiana by the Practice Act of 1805 were the establishment of the trial by jury, and the requirement that the testimony of all available witnesses be taken in open court, with depositions permitted only for witnesses who were ill, aged, or beyond the jurisdiction of the court. Other provisions established a simplified form of pleading, created the provisional remedies of attachment and arrest, provided for the enforcement of judgments under the writs of fieri facias and distringas, and authorized the court to issue writs of quo warranto, procedendo, mandamus, and prohibition. The statute went into great detail in prescribing the form of citations, writs, and other mandates to be issued by the court. As Livingston was a staunch disciple of the great English reformer, Jeremy Bentham, the simplified procedure embodied in the Practice Act of 1805 reflected Bentham's influence.



PROFESSORS OF LAW who spoke at the 19th annual meeting of the Louisiana State Law Institute meeting in New Orleans March 25 included (from left) Leon Sarpy, Loyola; Henry G. McMahon and J. Denson Smith, L.S.U., and Leon D. Hubert, Jr., Tulane. McMahon is coordinator and Smith, director, of the Law Institute. They are holding a Projet of the Louisiana Code of Civil Procedure.

—Leon Trice Photo.

Louisiana was admitted as a member state of the North American union in 1812, under a constitution adopted earlier in that year. Neither this constitution nor the statutes implementing its provisions made any substantial changes in the procedural law of Louisiana, other than the creation of a system of courts based on the American pattern, and consisting of a supreme court, district courts, and justice of the peace courts. The Practice Act of 1805 remained in effect until its repeal when the Code of Practice went into effect in 1825.

Since the Practice Act of 1805 provided relatively few procedural rules, the civil procedure of Louisiana at the end of this period was based primarily on the Spanish procedure in force during the Spanish dominion. Two significant changes had been made therein by the Practice Act: the adoption of the trial by jury; and the requirement that the testimony of all available witnesses be given in open court. The adoption of the common law rules of evidence followed in the wake of the adoption of the jury trial almost as a necessary consequence. The requirement of *viva voce* testimony in open court resulted in the direct and cross-examination of witnesses as under the English practice. As a result, the trial of litigation in Louisiana, at least during this period, took on the complexion of the common law trial. But otherwise, except to the extent that it ran counter to the provisions of the Practice Act and other legislation, Spanish influence upon the civil procedure of the state during this period remained paramount.

Code of Practice of 1825

Pursuant to a legislative resolution of March 14, 1822, L. Moreau-Lislet, Edward Livingston, and Pierre Derbigny were appointed as a committee to revise and amend the so-called Civil Code of 1808, to prepare a commercial code, and to submit a "treatise on the rules of civil actions and a system of the practice to be observed before our courts." No more able group of jurisconsults could have been selected for these tasks.

Early in 1823, the three redactors submitted to the Legislature the *projet* of the new procedural code, which was subsequently approved and went into effect in 1825. This Code of Practice, in form and arrangement, was typically civilian, consisting of 1155 articles numbered consecutively and divided into titles, chapters, and sections. As Colonel Tucker, the distinguished President of the Louisiana State Law Institute, has pointed out, it was "the product of a mixture of French, Spanish, and Roman law elements, together with common law elements of English origin."

The draftsmen of this procedural code, in the comments in their *projet* not only gave their reasons for the adoption of controversial devices and principles, but listed the sources of the more important articles of the code. An examination of these notes is extremely interesting. The direct Roman influence was slight, only eight references having been made to the Digest and three to the Institutes, all in the title dealing with actions. Spanish procedural law, as might be expected, served as the basis of a number of extremely important segments of the new codification,

with 63 references to the Spanish codes and procedure writers. There must be considered in this connection, however, the 45 references to the Practice Act of 1805 (the great majority of which in turn were bottomed on Spanish procedure), and the 69 references to Louisiana statutes (some of which were predicated on general concepts of Spanish law.) French procedural theory, which had played a rather negligible role in the preceding era, increased its influence upon the adoption of the Code of Practice. Thirty references in the redactors' source notes were to the works of French commentators, with the more important and indirect influence reflected through the 26 references to the Civil Code of 1808, which was based largely on the Code of Napoléon.

The Spanish procedural law constituting direct sources of the procedural code was drawn principally from the *Siete Partidas,* and the procedural work of Febrero and Hevia Bolaños. The writings of Domat and Pothier constituted the direct borrowings from pre-code French procedural theory. Important segments of Louisiana's procedural law, such as succession procedure, reflected the indirect influenc of French procedure.

One of the deficiencies of the redactors' source notes is that very few references to Anglo-American law are listed, although even a cursory examination of this code indicates quite clearly the Anglo-American contribution, though lesser than the Romanistic one, was considerable.

We have seen heretofore that, under the Practice Act of 1805, the institution of jury trial had been adopted, and that this led to the jurisprudential adoption of the common law rules of evidence. Under the Anglo-American system, the appellate court reviewed only questions of law and ordinarily could not reverse the jury on factual issues; under the continental system, the appellate court reviewed both legal and factual issues, as presented by the record. A compromise had been effected by the Superior Court of the Territory of Orleans: the court reviewed issues of law on appeal, and if any appellate review of factual questions was desired, the case was completely retried by a new jury selected in the appellate court. Under the Constitution of 1812, no retrial of a factual issue could be had before a new jury in the Supreme Court. The latter soon decided that the appellate court could review the transcript of the evidence presented to the trial court, to determine the correctness of the jury's findings of fact. The principle of appellate review of the facts thus adopted was repeatedly offered by the court, and recognized in all subsequent constitutions of the state, at first, impliedly and then expressly.

The effect of these decisions, which did not make themselves evident for some years, was to prove far-reaching. As the appellate courts were free to substitute their own findings on factual issues for the jury's verdict, and not infrequently did so, jury trials in civil cases ultimately were held with relative infrequence. As a result, the technique of applying the common law rules of evidence completely changed in the vast majority of civil cases. Instead of being used to determine the *admissibility*

of evidence sought to be presented to the lay jury, they were now used by the trial judge, skilled through experience in the marshalling and evaluation of evidence, to *weigh* evidence, usually admitted subject to the objections urged. In the area of the trial, continental procedure had regained much of the ground previously lost to Anglo-American procedure; and if the former did not emerge triumphant, at least it effectively neutralized much of the latter's earlier victory.

The influence of Anglo-American procedure, however, continued to increase during this period, as a reading knowledge of Spanish and French grew rarer in the profession, and Anglo-American legal literature became increasingly available. Members of the Louisiana Bench and Bar began to turn to English and American cases and the common law writers for guidance. The courts in this period occassionally invoked the dubious aid of Anglo-American precedents in the solution of procedural problems really calling for the application of the principles of continental civil procedure. Not a great deal of damage was done thereby, but this interstitial seepage subsequently was to pave the way for an increased reception of Anglo-American procedural law.

Code of Practice of 1870

The purpose of the revision of Louisiana's two codes following the Civil War were the elimination of all references therein to the institution of slavery, and the integration therein of all related legislation adopted since 1825. The Code of Practice of 1870 went on further than this, and did little to change the civil procedure of Louisiana.

Important changes, however, were otherwise brought about during this period. The former judical view that common law terms in the procedural code and statutes were to be regarded merely as translations of the names of their continental counterparts now yielded to an excessively generous evaluation of the common law contribution to the procedure of the state, and increased resort to the legal compendia then being published in America.

The American code procedure movement, which was ushered in by New York's adoption of the David Dudley Field Code of Procedure in 1848, and which spread rapidly throughout America during the period now under consideration, had much to do in extending the influence of Anglo-American procedure over Louisiana practice. Paradoxically enough, the initial flow of influence was reversed, for it was the Louisiana Code of Practice of 1825 which provided the inspiration of the Field Code, and "from it very many of the best portions of the Field Code were adopted."

The adoption, since 1870, of a number of procedural statutes has further increased the content of Anglo-American procedure in Louisiana practice. Limitations of time permit the reference only to the most important of these legislative acts.

The code provisions relating to injunctions originally were taken indirectly from French procedure, through the medium of provisions of the Civil Code of 1808. With the rapid social and economic development in Louisiana during the past four decades, this injunction pro-

cedure had proven inadequate, and even anachronistic. Considerable improvement in injunction procedure had been made in prior years in several American jurisdictions. The injunction practice in the federal courts particularly had been improved through the adoption of a statute drafted by an extremely able congressional committee after an extended study of the subject. In 1924, Louisiana adopted a statute regulating the issuance of interlocutory injunctions, which was taken almost verbatim from this federal statute. The adoption of this legislation, and the gradual reception of equity principles relating to the issuance of injunctions which occurred both before and after this enactment, has resulted in an injunction procedure virtually of Anglo-American origin.

Reasons for the Legislative Mandate for Revision

By Act 335 of 1948, the Legislature of Louisiana directed the Law Institute to prepare a comprehensive projet for the revision of the Code of Practice. A brief survey of the civil procedure of our state indicates clearly the reasons for this legislative mandate.

1. The rules regulating civil actions and proceedings are to be found in the Code of Practice, a large number of special statutes adopted since 1870, hundreds of judical decisions, and in the Civil Code. The latter contains large segments of our adjective law, including the procedural rules, relating to successions, tutorship, Judicial emancipation, interdiction, curatorship, annulment of marriage, separation from bed and board, and divorce. There is an urgent need for the consolidation of all of these procedural rules into a single codification.

2. In the real sense in which the word should be used, there has never been a revision of the Louisiana rules of civil procedure since the adoption of the Code of Practice of 1825. The so-called revision of 1870 went no further than to delete all references to the institution of slavery and to integrate a small number of procedural statutes adopted during the period 1825-1870. Procedural rules which worked beautifully at the time of their adoption became obsolete and unworkable due to the changes in social and economic conditions over a period of more than a century and a quarter. Additionally, over this period of time there had been a very considerable amount of judicial gloss superimposed over the rules of positive law, much of which was unnecesssarily technical and some less than useless. There is an urgent need for the revision and simplification of these procedural rlues.

3. With the passage of time, new and more efficient procedural devices and concepts have been evolved in other jurisdictions, both in America and on the Continent. Some of these would constitute as great an improvement of our own procedural system as they do in the jurisdictions where they originated. The adoption of the Federal Rules of Civil Procedure, and their successful use for almost a quarter of a century, made immediately available a number of these newer and more efficient procedural devices, and ushered in a completely new procedural philosophy. There is an urgent need for the borrow-

ing of some of these more efficient devices which have clearly demonstrated their utility and workability in other jurisdictions, and which could be assimilated successfully into our own procedural system.

4. The French version of the Louisiana Code of Practice of 1825 was the official one, with the English version merely a translation, and at that not a particularly good translation. In the 1870 revision, this imperfect English translation was retained as the official version. Much of the original simplicity and efficacy of the code has been lost as a result. Additionally, the more important procedural changes made since 1870 have been the result of a large number of special statutes. The draftsmanship of many of these left much to be desired in the way of clarity, and the style employed was a throwback to the days of the original "feather-bedding" by labor—when the scrivener, who was paid 25c a folio of a hundred words, threw in as many hackneyed expressions and repetitious phrases as he felt he could get by with. There is an urgent need for the restatement of the rules of civil procedure in simple English.

THE STRUCTURE

Except in the two respects mentioned later, the proposed Louisiana Code of Civil Procedure follows the conventional pattern or structure and organization of civilian codes. It is divided into 9 books, 36 titles, 117 chapters, and 1029 articles. It departs from the conventional pattern of codes of civilian jurisdictions, however, in two respects — the numbering of the code articles, and the inclusion of the redactors' comments in the comments in the code itself.

In lieu of the consecutive numbering of code articles from the first to the last, the proposed new code employs the split number system, with all articles in a particular chapter or section numbered consecutively, but with wide gaps between the number of the last article in a particular chapter or section and the number of the initial article in the next book, title, chapter, or section. This system was adopted to permit the continuous revision of the new code after its adoption, by the inclusion in appropriate places therein of special procedural statutes adopted by the legislature in the future. In the few instances where re-numbering of code articles by amendment will be necessary, it will be limited to the re-numbering only of the small number of articles in the particular chapter or section. The bill to adopt the new code will designate the Law Institute as the continuous revision agency of the code, with delegated authority to change statutory sections into code articles, to make the necessary editorial revision thereof, and to integrate them into the proper place in the code, without any change of substance. This is the same system used successfully for the past ten years in the continuous revision by the Law Institute of the Louisiana Revised Statutes of 1950.

At the time the proposed new code is introduced for adoption, the Law Institute will recommend the adoption of a concurrent legislative resolution authorizing the printing of the reporters' comments in the code itself. The inclusion of the comments in the code

is a departure from traditional civilian redaction techniques, and was adopted over the opposition of a few of the old-school civilians in Louisiana. The system was first employed by the Louisiana State Law Institute, as an experiment, in the *projet* of the Louisiana Criminal Code of 1942. These official comments in the latter have proved so helpful to the courts and practicing lawyers of the state that there was a strong professional demand that this technique be employed in drafting the *projet* of the new procedural code. Judicial precedent plays an even more important role in Louisiana than in other civilian jurisdictions, and a consideration of the prior jurisprudence was deemed helpful in all cases, and absolutely necessary in those instances when the jurisprudential rule was being reversed legislatively.

THE COMPOSITION

The Louisiana Code of Civil Procedure is, to a much greater extent than is generally realized, a revision and simplification of the existing rules of Louisiana practice.

"Probably the three greatest, and certainly the most controversial, changes made in our procedural law during the past forty years resulted from the adoption of pretrial and discovery procedures, and of third party practice. All of these changes were effected by the Legislature on its own initiative in 1952 and 1954, respectively. In the few years which have passed since their adoption, the workability of all of these procedural devices has been demonstrated most convincingly, with the result that the original professional opposition to their adoption has now melted away. All three of these procedural devices are recommended for retention in the proposed new code. By comparison, the changes in the procedural law recommended by the Law Institute are relatively minor."

One cardinal policy adopted by the Law Institute quite early in the task of revision, and followed consistently, was that no change would be made for the mere sake of change. Numerous procedural rules and devices of other jurisdictions were studied and considered to determine their availability to the civil procedure of this state, and some of these have been incorporated in the proposed new code; but none had been borrowed without convincing proof of its greater utility and workability than its present Louisiana counterpart.

In the drafting of the *projet* of this code, every care and precaution was taken to include therein only those rules and concepts which could implement effectively the substantive law of Louisiana, and which would prove workable in actual use. Each of the three reporters on this project had been engaged in the active practice of law in Louisiana for more than a dozen years, and possessed considerable knowledge of the operation of procedural rules in actual use.

Of necessity, a number of changes in the present procedural law are recommended. These consist principally of the modification and modernization of the present rules rather than the adoption of new ones. Despite the excellent work done by our appellate courts during the past quarter-century in the discarding of hypertechnical rules, a large number of these re-

main in our procedural law. These are throwbacks to an age when a lawsuit was regarded merely as a duel between skilled protagonists. These unfortunate rules are recommended for legislative overruling.

The advantages of having rules of procedure in the state courts which are identical with or similar to those used in the federal courts in Louisiana are obvious. The Law Institute, therefore, has adapted the rules proposed in this *projet* to the Federal Rules of Civil Procedure whenever it could do so without violating the settled and basic theory of the procedural concepts of Louisiana. The recommended synchronizing of these dual systems of procedure will result in a highly desirable similarity, but not in complete identity.

MAJOR CONTRIBUTIONS TO LOUISIANA LAW

The proposed Louisiana Code of Civil Procedure has much to offer to the law of Louisiana, and to the administration of civil justice in this state. In summary of its major accomplishments it may be said that, if adopted, it will:

1. Provide the first consolidation in Louisiana of all of the rules applicable generally to civil actions and proceedings;

2. Simplify these rules, and thus expedite litigation and facilitate the decision of cases on their merits, rather than upon technical grounds;

3. Modernize the state's system of civil procedure, and adapt it for efficient use under modern social and economic conditions; and

4. State clearly, in simply English which can be understood by any intelligent layman, the procedural rules applicable in all civil cases.

Even prior to the adoption of its proposed code, *projet* has made its own contribution to the profession: It is the very best textbook on the subject of the civil procedure of Louisiana yet produced. Although published only a few short weeks ago, it has been relied on to support the decision of at least one appellate court case; and it has been invoked by counsel as persuasive authority in several cases now pending in the trial courts.

Remarks by the Chief Justice at the Louisiana State Law Institute

By Chief Justice John B. Fournet

From year to year it has been my custom to address a few remarks to the Louisiana State Law Institute in joint session with the Louisiana State Bar Association. Occasionally these have been formal, but more frequently they have been "off the cuff." This year, since there is to be no joint meeting, it seems I will have to make two such addresses. Thus do the duties of my office multiply!

I am sure most of you present today heard my address at the meeting last year in Biloxi, which was a rather comprehensive report of my first ten years as the administrative officer of the Supreme Court and the accomplishments made during that period toward the improvement of the administration of justice. As pointed out then, although these accomplishments were more or less spearheaded by me, of necessity I was able to bring them about largely through the Judicial Council and with the full cooperation of the bench and bar, for which I have been most grateful. From time to time we have also had to call for the invaluable assistance of the Louisiana State Law Institute, which has been freely and cheerfully given. This is as it should be, for both the Institute and the Judicial Council are dedicated to the long-range task of simplifying the legal procedure in Louisiana so that the business of the courts may be expedited and, in this way, the administration of justice promoted.

Since making that report to you last year, we have not accomplished a great deal. This is due to the fact that much of the time of the Judicial Council during the intervening year has been devoted to the necessary preparations incident to the revised jurisdiction of the appellate courts that will become effective July 1. Through a committee of the Council a detailed study of the legislation needed to implement the Constitutional amendments adopted to change over this jurisdiction has been completed and a proposed draft of the necessary statutes has been submitted to and approved by the Judicial Council for introduction at the legislature in May. It is noted that you will be given a more comprehensive report of our work along this line at the afternoon session today.

In addition to this legislative implementation, the judges of the Courts of Appeal, working with the cooperation of our Judicial Administrator, have met on a number of occasions for the purpose of drafting rules that will not only be uniform throughout the state but also in complete harmony with the rules of the Supreme Court, certain of which are also being revised. Wherever practicable, the rules of of the Supreme Court and those of the appellate courts on the same subject will be as nearly uniform as possible.

This address was delivered by Chief Justice Fournet in New Orleans, Louisiana, March 25, 1960.

Vital Problem

Another problem vital to the proper functioning of these expanded appellate courts is that of providing them with adequate equipment and staffs. Committees of the Judicial Council have been studying this problem, particularly from the viewpoint of adequate library facilities for each of these courts, and everything possible is being done to see that the necessary funds are made available to furnish all of the courts not only with a full library, but each of the judges with law clerks and other services.

In looking over your program it is noted that you are, during this two-day session, to review not only recently completed projects but also to discuss the future projects to be undertaken by the Institute. I find of particular significance the fact that the new Code of Civil Procedure is ready for submission to the legislature in May. It will be one of the most comprehensive civil procedure codes in the world today. It could not be adopted for use at a more opportune time, coming, as it does, at about the same time as the change-over in our appellate jurisdiction. This code, together with our expanded Courts of Appeal, will permit Louisiana to expeditiously handle the ever-increasing caseload that is today such a problem throughout the country on all judicial levels, and will make Louisiana truly a leader in the field of judicial administration.

Delayed Justice Will Pass

With the transfer of the larger part of our appellate jurisdiction to these Courts of Appeal the delay of twelve to eighteen months that has heretofore been experienced in the Supreme Court will become a thing of the past. This will make it possible to have a case tried in the district court and finally passed

CHIEF JUSTICE John B. Fournet of the Supreme Court of Louisiana is flanked at the Louisiana State Law Institute's 19th annual meeting in New Orleans by Victor J. Holper (left), vice-president and editor-in-chief of West Publishing Co., St. Paul Minn., and LeDoux R. Provosty, Alexandria, La., a vice-president of the Law Institute.

—Photo by Tony Vidacovich, New Orleans States-Item

upon by an appellate court in less than a year, and the inequities of delayed justice will pass from Louisiana's legal scene.

Of course, it must be remembered that with the continued and rapid growth of the state the task of providing the people with an efficient judiciary suited to their needs never ceases. In order that continuous studies might be made concerning the administration of justice and the need for possible revision in other areas, the Judicial Council at its March meeting established a new permanent committee to study revision of the judiciary article of the Constitution. Already on the agenda for the Fall meeting of the Council is a study of our traffic courts and their problems. In the years to come it is expected that this permanent committee will concern itself with questions of minimum appellate jurisdiction, local appeals, appeals in misdemeanor cases, and family and juvenile court problems.

Thus does the Judicial Council fit in with the long-range work of the Institute in its never-ending search for ways and means of simplifying the law procedure in Louisiana to make the law better adapted to present social needs. To this end we need the continuing cooperation of the Law Institute. Together we can make profound and lasting contributions to the advancement of law and justice in our time.

The Committee on Law Reform

By Eberhard P. Deutsch
(New Orleans, Chairman)

The first meeting of the bar association's newly organized Committee on Law Reform was held in Natchitoches on March 5-6, 1960.

This committee—which combines the former Committees on Legislation, Uniform State Laws, and Jurisprudence and Law Reform—is composed of 27 lawyers from every part of the state. Ben R. Miller of Baton Rouge is Vice-Chairman.

The committe has three functions—the initiation of reforms, in the law; consideration of bills introduced in the Legislature; and the study of proposed uniform state laws. To carry out these functions, the committee is broken down into three Sub-Committees—Jurisprudence, Legislation and Uniform State Laws.

The period from 2:30 to 4:30 P.M. on May 5, the first day of the association's 1960 convention in Biloxi, has been set aside for an open meeting of the Committee on Law Reform.

At this meeting, members of the committee will discuss legislation which the committee itself is recommending for passage, significant bills which will be introduced at the instance of others at the 1960 session of the Legislature, and proposed uniform laws which the committee has under study.

Recommendations

The committee itself is recommending passage of four principal pieces of legislation—

1—Establishment of procedure for appeals in all misdemeanor cases. Under present law, a person convicted of a misdemeanor in a district court, and sentenced to a fine of $300 or less or to a jail term up to six months, has no appeal. This seems contrary to accepted ideas of justice, particularly since a person receiving the same sentence in a city court has an appeal to the district court.

2—Provision for complete records of proceedings in all criminal cases, to be transcribed in event of appeal. Under present law, no record is made, even in capital cases, unless the accused has the means to pay for it himself. This contrasts with the practice in civil cases, in which complete transcripts are always made, even when only a few hundered dollars are involved. It is true that appeals in criminal cases are only on questions of law; but no question of law can be determined in the abstract, without regard to the factual context in which it arose. The legality of a prosecution, for example, depends on whether the District Attorney stated every essential fact of his case in his opening statement; but how can this be determined with certainty if the opening statement was not transcribed? In a homicide trial, admissibility of evidence of the deceased's bad character depends on whether sufficient evidence of a hostile manifestation on his part has been presented. Again, a transcript is necessary to decide the question on appeal.

3—Authorization for local establishment of fair procedures for provision of counsel for indigent accused. Louisiana, in common with other Southern states, has unstandardized and haphazard procedures in this regard. In Orleans Parish there is, in effect, a public defender's office financed by the United Fund. Elsewhere in the state, private practictioners are assigned to defend indigents without compensation. In some districts, all members of the local bar, whether or not experienced in criminal practice, are regularly assigned. In others, the entire burden falls on the relatively few lawyers who specialize in criminal law. The bill proposed by the committee would authorize each parish to adopt whatever procedure—public defender, private counsel, assigned counsel—is best adapted to its needs, with compensation for the defender in every case paid by the State. This system is both flexible, and fairer than the present system to both the indigent accuseds and their counsel.

4—Provision for waiver of the State's sovereign immunity. In 1959, the Supreme Court of Louisiana held, on the basis of a 1946 amendment of the Constitution, that the Legislature is no longer empowered to waive the state immunity. The two cases in which the ruling was made were tort cases; but the holding is equally applicable to contract claims, and presumably also to tax-refund, workmen's-compensation and other types of claims against the state and other public bodies, except for expropriation. This situation obviously calls for reform, and the committee is proposing two alternative legislative packages. One simply authorizes the Legislature to waive the immunity, as before. The other, more in keeping with the modern trend, waives the immunity generally, except as to Civil Rights litigation.

Bills Under Study

Among the bills proposed by others which the committee has under study are—

1—A bill to revise the workmen's compensation act, and to establish a commission to administer it. It is the committee's view that the great majority of the members of the association oppose this bill.

2—A bill to revise the rules of prescription in criminal cases to commence the prescriptive period on the date of commission of the crime, instead of on the date of knowledge thereof by the prosecuting authorities. An exception is made for such secret crimes as bribery and embezzlement. This bill is proposed by the Louisiana State Law Institute, and would appear to import a desirable element of certainty into this field of the law.

The committee has several proposed uniform laws under consideration, including one which would modify the rules applicable to co-obligors.

All members of the association are invited to attend the committee's May 5 meeting, and to participate in the discussion of its work in progress.

The committe also suggests that any members of the association who have in mind introducing bills at the coming session of the Legisla-

ture, submit the bills in advance to the committe for study and comment, in order to facilitate the committee's work and avoid duplication.

The complete membership of the committee, in addition to the Chairman and Vice-Chairman, is:

Sub-Committee on Jurisprudence

Arthur C. Watson, Natchitoches, Chairman
H. Flood Madison, Jr., Monroe, Vice-Chairman
Jack C. Caldwell, Franklin
Thomas W. Davenport, Monroe
Ray Forrester, New Orleans
George B. Hall, Alexandria
Stuart S. Kay, DeRidder
Charles L. Mayer, Shreveport
G. William Swift, Jr., Lake Charles

Sub-Committee on Legislation

Jim W. Richardson, Sr., Bogalusa, Chairman
Felicien Y. Lozes, New Orleans, Vice-Chairman
Robert Ainsworth, Jr., New Orleans
Dixon Carroll, Shreveport
Guy J. D'Antonio, New Orleans
Claude B. Duval, Houma
J. Thomas Jewell, New Roads
Edgar H. Roberts, Baton Rouge
Clyde W. Thurmon, Shreveport
Earl H. Willis, St. Martinsville

Sub-Committee on Uniform State Laws

Joseph McCloskey, New Orleans, Chairman
Joseph E. Bass, Jr., Lake Charles, Vice-Chairman
A. B. Atkins, Jr., Homer
Earl Edwards, Marksville
Ashton Phelps, New Orleans

LEADERS OF THE COMMITTEE on Law Reform are, (from left), top, Eberhard P. Deutsch, New Orleans, chairman; Jim W. Richardson Sr., Bogalusa, chairman of the sub-committee on legislation; and Joseph McCloskey, New Orleans, chairman of the sub-committee on uniform laws. Seated are Arthur C. Watson, (left) Natchitoches, chairman of the sub-committee on jurisprudence, and Ben R. Miller, Baton Rouge, vice-chairman of the Law Reform Committee.

The Case for the Clients' Security Fund In Louisiana

By John W. Bryan, Jr.

The Louisiana State Bar Association in 1959 created a special committee designated as The Special Committee for The Clients' Security Fund for the purpose of studying the Clients' Security Funds established by the bar association of other states in the United States, in Canada and in other countries. The committee has compiled considerable information on the subject and it proposes to obtain further information before placing this report before the Board of Governors at the annual meeting of the bar association at Biloxi, Mississippi, on May 5, 1960. It is believed that some of the information obtained can and should be presented to the bar at this time so that members may have a background of information from which to consider the report of the committee when delivered in final form.

The members of every profession are confronted with the problem of dealing with the intentional wrongs of an occasional member from time to time. It is generally well recognized that the American lawyer is a leader in his community and is well respected for his civic and professional activities.

The exception to the rule is the defalcator, large or small, who furnishes the newspapers with the stories which are damaging to the profession, and which when enlarged, are unfortunately made the subject of some of the imaginative fiction which is found on the television and the moving picture screens today. It is needless to say however good the majority may be the well publicized actions of a small minority and the exaggeration in the public mind can be of damage to the prestige of the American Bar.

This problem was fully recognized by the American Bar Association when it established a committee to look into the desirability of offsetting and eventually overcoming such adverse publicity through a clients' security fund. The committee and the fund are intended to supplement the discipline and disbarrment of lawyers for the protection of the general public and of the organized bar. It was conceived on the premise that disbarrment may protect the public from repetition of dishonesty on the part of the disbarred lawyer but it does not right the wrong in the mind of the aggrieved client nor does it settle the matter in the minds of the public who, as ordinary humans, may be prone to become suspicious of all of the members of the bar as a whole.

Plainly the public does expect more from the lawyers than a mere expression of regret and an admission that the disbarred or suspended lawyer is not of the moral character suitable for the practice of law. Something further is required. It would appear that the logical answer comes from a limited fund set up by the lawyers on a reasonable scale for the purpose of indemnifying the clients of the small number of lawyers who have embezzled the funds of the latter after which they have become bankrupt or insolvent.

Mr. Theodore Voorhees, a Philadelphia attorney, is chairman of

the American Bar Association's Special Committee on Clients' Security Fund, and is the author of a study entitled "The Case for the Clients' Security Fund" in the 1959 Journal of the American Judicature Society. Mr Voorhees in effect points out that the mistakes of doctors are not often brought into the open but those of lawyers are regular matters of gossip and misunderstanding.

Bonding Not Answer

It is clear that bonding of lawyers is not the answer, unless done on a compulsory basis which invites legislative interference with the control of the bar association by the lawyers.

Such a fund has been established by the Vermont Bar Association and by the Oregon Bar Association on a state-wide level. The Philadelphia Bar Association adopted a resolution establishing such a fund on June 2, 1959. The Bar Association of Colorado has such a fund under consideration and it has been favorably reported by the special committee making a study of the matter. The American Bar Association through its special committee has prepared and published a "Guide for the Establishment of Clients' Security Fund (second edition)". The findings of that committee are briefly summarized in the report:

"Nothing is more likely to convince the public of the absolute honesty of the profession than the knowledge that the profession is itself confident of the integrity of its members and is prepared to underwrite it."

A cursory examination of the records of reported disbarrment cases in Louisiana involving embezzlement has been made preliminary to a detailed analysis of those cases to determine the amount of losses and the frequency of losses from dishonesty. It would appear that the losses are usually small in amount and the frequency has not been great. It therefore should be expected that a small fund would be ample to indemnify the clients for their losses, and, achieve immeasurably good public relations for the bar association.

An exact study of the cost of reimbursement over a period of years has not yet been completed for Louisiana but it appears that it can safely be assumed that the cost to the average lawyer of such a fund would be very small if the value attributed to the fund by those organizations which have actually tried it has any meaning.

A number of the bar associations which have had experience over the period of time sufficient to test the value of the idea have been polled and the respective comments should be of great interest to the lawyers of Louisiana.

South Africa

Letter dated September 24, 1959 from G. N. McBlain, Esq., chairman, The Attorney's Notaries and Conveyancers Fidelity Guarantee Fund of South Africa:

"This Fund was established with effect from the 1st January 1942 as a voluntary act by the legal profession in the Union of South Africa, mainly because it was felt that something had to be done to counter the very adverse publicity we had received and the adverse reaction on the part of the public, in consequence of a series of em-

bezzlements, some of which were of quite spectacular proportions. The press in this country has always seen fit to give great prominence to news of thefts by lawyers, possibly by way of a back-handed compliment, although I doubt that motive. We felt, eventually that it was high time lawyers recognized in a practical manner what the public already knew, i.e. that there are black sheep in our profession, just as there are in any walk of life. It was felt that if we established a Fund as a voluntary act, a Fund which would be built up by our own contributions, then the knowledge of this act would restore the public confidence in the profession. I have no doubt whatever that the establishment of the Fund did have the effect and has led to improved relations so that in general it can be said that the public does not hesitate to entrust money matters to lawyers."

Ontario

Letter dated September 14, 1959 from Earl Smith, Esq., secretary of the Law Society of Upper Canada (Ontario):

"Personally I am convinced from our experience here, and from my correspondence with Secretaries of Law Societies all over the Commonwealth, that the establishment of assurance funds is one of the finest bits of public relations that the legal profession has had. I recently wrote to the Secretary of the Law Society in England asking for information, and in his letter appears this sentence:

"Subject to that (he is referring to the exhaustion of all other remedies) as a matter of policy we admit every possible claim because we think that the Compensation Fund is about our best public relations asset . . .'

"The question of publicity is always an uncertain one because we never know what slant a reporter or his paper may take. In Ontario we had some newspaper publicity prior to the establishment of the Fund. This was due to resolutions passed by the Canadian Bar Association and by other legal bodies in Ontario. When the Fund was established a press release was given out and copies of the Committee's Report were made available. In order to show you and your Committee exactly what happened when the Fund was established, I am sending you herewith a book of press clippings. The first three pages are clippings prior to the establishment of the Fund. It is true that there are quite a few headings referring to—'Dishonest Lawyers', 'Clients Bilked by Lawyers', 'Clients Cheated by Lawyers'. I think, however, that such headings are more than made up for by other reports, and by certain editorials. You will note some of these headings—'The Lawyers Lead', 'Lawyers High Sense of Honour'. We do not seek any publicity when claims are paid, but I think there is a growing recognition throughout the province that when a client loses through the dishonesty of a lawyer, he may in proper cases be reimbursed by the Fund."

New Brunswick

Letter dated September 8, 1959 from R. Dwight Mitton, Esq. Vice-President of the Canadian Bar Association, respecting the establishment of a fund in New Brunswick:

"There was very considerable opposition on the part of some of the Members of the Bar to the establishing of this fund, and when the proposal was originally brought before the Society, it was defeated, some members fearing adverse publicity and others that by setting up such fund, we were advertising to the world that some members of the Profession were not honest. However, I do not think that this has been the result. I doubt whether the public generally is aware of the existence of this Fund and if the occasion arises, the members of the Bar do acquaint the public of the steps which the Profession has taken to protect the clients of the individual Barrister, who may not have properly accounted to them.

"The Council of the Barrister's Society has full control of the administration of the fund, and while it does not undertake to reimburse any client in full for his loss, each individual instance is to be investigated and Council will authorize payment of part, or in some cases possibly the full amount of the defalcation.

"I feel sure that if a proposal were made at the present time to do away with this Fund, such a move would be very strenuously opposed by a great majority of the members of the Profession."

British Columbia

Letter dated September 10, 1959 from A. Watts, Secretary of... the Law Society of British Columbia:

"As so often happens when you do something useful you do not hear very much about it afterwards. We have heard very little public comment on our fund which has been in operation since 1948.

"However, one of the reasons for establishing the fund was that we were quite confident that there would be a public outcry if defalcations appeared and there was no reimbursement. I think the Society also felt that such an outcry might lead to certain controls being thrust upon the lawyers which might jeopardize the independent position so essential if the public is to be properly served.

"In reference to the second paragraph of your letter I should be most surprised if the public in the various States where defalcations had occurred is not very well aware of it and it is this situation coupled with an inability to

reimburse which, in our view at any rate, makes the establishment of a fund so desirable.

"We have had no serious complaints in regard to contributions to the fund. I can recollect some debate among the lines 'Am I my brother's keeper-' but there never has been any objection once the fund was decided on."

Alberta

Letter dated September 24, 1959 from John S. Cormack, Esq., Secretary of The Law Society of Alberta:

"Our Society consists of 860 active members approximately, of whom about 820 are liable for the Assurance Fund levy, which for the last few years has been set at an annual figure of $25.00 per member. In that regard, our assurance fund is in an healthy condition, even though we have claims on hand in respect of one defalcation which it is estimated will run to about $30,000.00.

"In your letter you mention that your membership appears to fear that the acceptance of a fund will result in harmful publicity. While I am only speaking for myself, it is my opinion that the contrary has been the case in Alberta. The above mentioned defalcation, when uncovered resulted in the disbarment and imprisonment of the lawyer in question and at the time, many of the claimants against the fund expressed some criticism of the Society for having allowed the lawyer in question to practice so long as he had. While the criticism was obviously unthinking criticism, nevertheless when the claimants learned that they were protected by our Assurance Fund, their concern evaporated. The expense of maintaining the fund is a hidden one as it is administered by this office, but involves very little other than bookeeping as the levy is compulsory and collection is not difficult because of the provision that failure to pay, results in an automatic suspension from practice."

Manitoba

Letter dated September 18, 1959 from St. Geo. Stubbs, Secretary of the Law Society of Manitoba:

"The general view is that this establishment of the Fund has been one of the greatest steps the profession has taken towards improving its public relations. The Fund has the full support of the members of our Society and I have not heard of any complaint regarding the annual assessment. We recently had an unfortunate experience in Manitoba, when one of our members embezzled over $60.000.00. We have paid out to his former clients over $45,000.00 and are still considering some claims. I would quote from a letter received from one of the clients, which is an indication of how the public regard our Fund:

'Mrs. Johns and I, having received encouraging information from Mr. Joseph Zuken's office pertaining to the Heap refund project undertaken by The Law Society, through you, know that we are exceedingly grateful for this unique financial assistance. Public relations are strengthened rather than damaged by this healthy participation under difficult circumstances.

'Thank you very much for this most helpful consideration.'"

Saskatchewan

Letter dated September 9, 1959 from C. R. Davidson, Q. C., respecting the establishment of the Fund in Saskatchewan:

"During the years of agitation by members of the profession, prior to the establishment of the fund, for the fund, the principal arguments against it were that honest lawyers should not carry the burden for dishonest lawyers; that it was an insult to the honest lawyer to ask that he be bonded in any way, and that it would result in poor publicity along the lines mentioned by you in your letter. Since the fund has been established all of these criticisms appear to have evaporated. I do not now of a single fact that suggests that the public believes that the legal profession accepts the existence of dishonesty within its ranks. I think that all of us now agree that the reverse is the case. We can now say to the public that it is justified in placing confidence in the profession, so much so that the vast majority of honest lawyers are prepared to make good losses to a client through the misconduct of the occasional one who goes wrong. We have never regretted the institution of the fund.

"Dealing with your second question regarding the expense of maintaining the fund. In the initial stages we set aside so much each year out of the general annual fees of members of the Society. Some years ago we levied an additional special fee of $10.00 per year, which was specifically appropriated to the fund.

"During the initial stages of the fund we kept our fingers crossed because we realized that one bad defalcation could wipe out the fund entirely. Also in the initial stages it was not practical to insure the fund in any way because the premium would have been out of all proportion. Our objective is to get the cash fund up to the point where we can carry the first part of any loss which might occur, obtaining insurance to take care of the excess. Our experience has been rather fortunate and we are fast approaching that point.

"My personal opinion is that the existence of the fund has curbed defalcations because the lawyer who is tempted to be dishonest knows that he is going to have to deal with the profession as a whole and not only the individual client. Along with the institution of the fund we also set up certain safeguards such as the right of the Law Society to examine the books of the members to see that they are keeping proper books and that their trust bank accounts reconcile with their books. We also take subrogation from the client against a defaulting lawyer where we have to pay a claim."

Nova Scotia

Letter dated September 22, 1959 from W. C. Outhit, Esq., Secretary of the Nova Scotia Barristers' Society:

"I am advised that prior to its establishment, many local lawyers had the same fears to which you referred, and had the same complaints about having to subscribe to such a fund. Our experience has been that establishment of the fund was applauded by the public and caused no unfavourable public reaction, but quite the contrary. Within the Bar itself, I believe that

many of those who opposed the idea, are now among its strongest supporters and are now even suggesting further steps towards compulsory bonding."

London

Letter dated November 16, 1959 from Herbert Lloyd, Under Secretary of The Law Society, London:

"It might be helpful to recall what happened when The Law Society introduced the Compensation Fund. Very shortly prior to 1939 on a number of occasions Solicitors who represented a very small proportion of the profession defaulted and attracted widespread publicity. On occasions questions were asked in Parliament and in 1941 The Law Society on its own volition introduced a bill to obtain the necessary powers to establish the Fund. The Fund itself was established after the War as it was felt that it was not right to introduce such a far reaching measure at the time when many Solicitors were in War services. The climate of opinion immediately after the War was probably very favourable for the introduction of such a scheme. But the main point was that it was announced to the public as a scheme devised by the legal profession because they thought so highly of their integrity and reputation that they wished this reputation to remain untarnished by the voluntary efforts of the good members of the profession. Accordingly the profession itself had decided to maintain integrity and that they themselves would reimburse any client of a solicitor who suffered loss in an admitted claim arising from the dishonesty of the solicitor. As far as I am aware since that no question of any kind has been asked in Parliament.

"So far as you are concerned the big thing is to have a very clear idea of precisely why you wish to establish the Fund. As we understand it the Fund is to be established to protect the good name of the profession but primarily to see that no members of the public suffers as a result of the wrong doing of one of your members, and it is this aspect of service to the public which forms the platform upon which all publicity in connection with the inauguration of the Fund is based. It is the element of service to the public, of good-will, and of integrity; the fact that the profession may indirectly benefit in any way certainly never appears, in fact it is doubtful whether it does financially, although good Public Relations are of course inevitably engendered in good measure by the introduction of such a Fund. I would like to repeat that in my own sphere when I am dealing continually with members of the public and press particularly when cases arise on solicitors defaulting, the fact, that we ourselves voluntarily established a Compensation Fund has been of inestimable value in engendering good Public Relations."

"Philadelphia Lawyers"

Closer to the local scene is the recent approval noted in a nationally syndicated column in "The Times Picayune" of January 29, 1960 written by Father Keller under the title of "Philadelphia Lawyers"

"Lawyers in Philadelphia have established a fund which dispenses up to $10,000.00 annually to in-

dividuals whose money may have been stolen or embezzled by their attorneys.

"The action, according to one member of the Philadelphia Bar Association, will help all lawyers.... He said: 'The bar must be able to say to the public that we stand behind the integrity of the bar as a unit.'

"The majority of lawyers are doing their best to protect the high standards of their noble profession.

"Whenever a few in their ranks take advantage of the trust placed in them, the greater majority can take constructive steps to correct any abuses.

"Everyone can do something to uphold truth. See that the benefits of just laws are extended on as wide a scale as possible and you will play a holy role. Remember truth originates with God and is the very foundation of peace and freedom."

Parole, Probation, Rehabilitation Studied

A symposium on "Correction at the Crossroads" will be presented Saturday, April 30 by the Tulane University School of law.

Dr. Lloyd W. McCorkle, director of the Correction and Parole division for the State of New Jersey, will be principal speaker.

Dr. McCorkle, a former warden of the New Jersey State Prison, will discuss problems in correctional administration. The symposium will be held, beginning at 8:45 a.m., in the Kendall Cram Room of University Center on the Tulane campus.

There is no charge, but Ralph Solvenko, director of the Tulane program of professional study, said prior registration by mail would be appreciated.

The symposium, which will include discussion from the floor lists as commentators:

C. Fred Donaldson, secretary of the Louisiana Parolee Rehabilitation committee; Leon D. Hubert, Jr., professor of law at Tulane and former Orleans Parish district attorney; Dr. Harold I. Lief, associate professor of psychiatry at Tulane and visiting physician at Charity hospital, and, Dr. Gene L. Usdin, senior associate of the department of psychiatry at Touro Infirmary and assistant professor of psychiatry at Tulane.

They will look into the growing problem which Louisiana faces with overcrowded prisons, prisoner rehabilitation and narcotic offenders. The problem exists in most states and that's a reason, Slovenko said, why Tulane sought Dr. McCorkle, a recognized authority, for its symposium in this field.

Dr. McCorkle is a former civilian prison administrator in Tokyo, Japan, and Director of the Highfields Experimental Treatment Project for Youthful Offenders in New Jersey. He has authored "The Highfields Story" and "Criminology and Penology." He is chairman of the New Jersey Narcotic Control commission.

The Louisiana Parolee Rehabilitation Committee submitted, on January 4, 1960, a report on its investigation of the problems relative to the rehabilitation of persons convicted of crime. This report, entitled "Revolution Two," sets forth the committee's recommendations providing for an expanded parole and probation system with far more men on parole and probation that at present.

"Revolution One" contains details of the reform, accomplished a year ago, of the Angola penitentiary.

The committee which drew up "Revolution Two" expressed the hope "to develop in Louisiana an entirely new concept for the rehabilitation of law violators and their absorption back into our society."

The committee's recommendations, Slovenko said, will be considered in May, 1960, session of the state legislature.

19th Annual Meeting

The nineteenth annual meeting of the Louisiana State Bar Association will be held May 4 through May 7 at the Buena Vista Hotel in Biloxi, Miss. The convention will get under way at 6:30 p.m. Wednesday, May 4, with the president's reception.

On Thursday, May 5, at 9 a.m., Fred A. Blanche, Sr., Baton Rouge, president of the state bar, will call the convention to order. Participating in the opening session will be David Cottrell, Jr., president of the Mississippi State Bar, who will welcome members of the Louisiana bench and bar, and Chief Justice John B. Fournet of the Louisiana Supreme Court.

Following the annual report and address of the president, awards of merit will be made to local bar associations, and the annual press awards will be presented. In addition, a special award will be presented to the Hibernia National Bank of New Orleans in recognition of its outstanding institutional advertising. At 10:30 a.m., the House of Delegates will meet.

Highlights of Thursday's meeting will be the LSBA banquet, at 7:30 p.m., honoring Chief Justice Fournet's 25th anniversary on the Supreme Court, and the annual luncheon of the Junior Bar Section at 12:45 p.m. Immediately preceding the luncheon, the Chief Justice and Mrs. Fournet will hold a reception in honor of the Junior Bar.

Sections scheduled to meet Thursday include Criminal Law; Taxation; Local Bar Organiza-

Biloxi Is Favored Site

Biloxi is strongly favored as the annual meeting site, the recent survey of the Louisiana State Bar Association membership reveals.

A total 72.69 per cent of the total 1608 members who cast votes in the recent poll voted heavily over New Orleans, which finished second, and over Baton Rouge, third.

The tabulations showed 1169 ballots cast for Biloxi, 274 for New Orleans and 165 for Baton Rouge:

The breakdown:

	BILOXI		NEW ORLEANS		BATON ROUGE		TOTAL	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
SHREVEPORT	90	(63.9)	27	(19.1)	24	(17.0)	141	(100.00)
MONROE	29	(66.0)	10	(22.9)	5	(11.1)	44	(100.00)
ALEXANDRIA	28	(68.3)	5	(12.2)	8	(19.5)	41	(100.00)
BATON ROUGE	117	(66.1)	16	(9.0)	44	(24.9)	177	(100.00)
N. O. AREA	567	(79.6)	126	(17.6)	19	(2.8)	712	(100.00)
LAFAYETTE	35	(76.1)	9	(19.6)	2	(4.3)	46	(100.00)
LAKE CHARLES	50	(74.7)	13	(19.4)	4	(5.9)	67	(100.00)
N. E. LA.	38	(62.3)	9	(14.7)	14	(23.0)	61	(100.00)
N. W. LA.	28	(50.0)	10	(17.9)	18	(32.1)	56	(100.00)
S. E. LA.	73	(76.0)	15	(15.6)	8	(8.4)	96	(100.00)
S. W. LA.	77	(66.4)	24	(2.07)	15	(12.9)	116	(100.00)
OUT OF STATE	37	(72.5)	10	(19.6)	4	(7.9)	51	(100.00)
TOTALS	1169	(72.7)	274	(17.0)	165	(10.3)	1608	(100.00)

tions, and Trust Estates, Probate and Immovable Property Law. Committees meeting Thursday include Louisiana Formulary Annotated, and Law Reform.

Friday's Events

On Friday, the sections on Labor Relations; Judicial Administration; International Comparative and Military Law; Mineral Law; Insurance, Negligence and Compensation Law; and the Committees on Public Relations; Legal Aid; and Resolutions will meet.

Highlight of Friday's program will be the annual LSBA luncheon. John Randall, president of the American Bar Association, will be principal speaker.

The final business meeting will be held at 9 a.m. Saturday, May 7, when the convention and the House of Delegates will meet in joint session. New officers and members of the board of governors will be introduced and inducted.

Social Events

Social events planned for the meeting in addition to the banquet, include a luncheon and style show at 1 p.m. Thursday; cocktail parties to be given by the Tulane, Loyola and Louisiana State University law school alumni clubs, at 6:30 p.m. Friday; a dinner dance at 8 p.m. Friday; and a seafood jamboree and dance around the motel pool at 12:30 p.m. Saturday.

In addition, there will be a guided tour of the Gulf Coast and a garden and home tour for ladies attending the meeting.

MEMBERS OF THE LADIES Entertainment Committee who met recently at the New Orleans Country Club to make plans for the annual meeting were (from left) seated, Mrs. Fred A. Blanche Sr., of Baton Rouge, and Mrs. Richard B. Montgomery, New Orleans; standing, Mrs. Ben R. Miller, Baton Rouge; Mrs. W. Ford Reese, New Orleans; Mrs. Kent Breard, Monroe, and Mrs. Thomas W. Leigh, Monroe. Mrs. Montgomery is committee chairman.

Code of Trial Conduct

PREAMBLE

Lawyers who engage in trial work have a specific responsibility to strive for prompt, efficient, ethical, fair and just disposition of litigation. The American Bar Association has promulgated Canons of Professional Ethics for the legal profession as a whole. The American College of Trial Lawyers, because of its particular concern for the improvement of litigation proceedings and trial conduct of counsel, presents this Code of Trial Conduct for trial lawyers, not to supplant, but to supplement and stress certain portions of the Canons of Professional Ethics. Generally speaking, the purposes and objectives of this Code are embodied in the following considerations:

To his client, the lawyer owes undivided allegiance, the application of the utmost of learning, skill and industry, and the employment of all honest and appropriate means within the law to protect and enforce legitimate interests. In the discharge of this duty, the lawyer should not be deterred by any real or fancied fear of judicial disfavor, or public unpopularity, nor should he be influenced directly or indirectly, by any considerations of self interest.

To opposing counsel, the lawyer owes the duty of courtesy, candor in the pursuit of the truth, cooperation in all respects not inconsistent with his client's interests and scrupulous observance of all mutual understandings.

To the office of judge, the lawyer owes respect, diligence, candor and punctuality, the maintenace of the dignity and independence of the judiciary, and protection against unjust and improper criticism and attack.

The Code of Trial Conduct beginning on this page of the Journal, was prepared by the American College of Trial Lawyers and issued in booklet form.

To the administration of justice, the lawyer owes the maintenance of professional dignity and independence and conformity to the highest principles of professional rectitude, notwithstanding the desires of his client or others.

This Code expresses only minimum standards and should be construed liberally in favor of its fundamental purpose, consonant with the fiduciary status of the trial lawyer, and so that it shall govern all situations whether or not specifically mentioned herein.

1. Acceptance of Employment in Civil Cases

In civil litigation, the lawyer should decline to prosecute a cause or assert a defense obviously devoid of merit, or which is intended merely to inflict harassment or injury, or to procure an unmerited settlement, or in which he, his firm or associates have conflicting interests.

2 Continuance of Employment in Civil Cases

After acceptance of employment the lawyer, unless discharged, should diligently conduct the cause

to an expeditious conclusion. He may not withdraw except at a time or in circumstances when the withdrawal will not adversely affect the interests of the client. He may withdraw at any time with the consent of the client or with the approval of the court if a procedure for obtaining approval exists, or if his continuance in the representation of the client will involve his knowing participation in the perpetration of a fraud. Upon withdrawal after receipt of retainer, the lawyer should refund such portion thereof as has not been earned.

3. Employment in Criminal Cases

Every person accused of crime has a right to a fair trial, including persons whose conduct, reputation or alleged violations may be the subject of public unpopularity or clamor. This places a duty of service on the legal profession and, even though the lawyer is not bound to accept particular employment, requests for service in criminal cases should not lightly be declined or refused merely on the basis of the lawyer's personal convenience or opinion concerning the guilt of the accused, or repugnance to the accused or to the crime charged.

4. Conduct of Criminal Cases

(a) Having accepted employment in a criminal case, the lawyer's duty, regardless of his personal opinion as to the guilt of the accused, is to invoke the basic rule that the crime must be proved beyond a reasonable doubt by competent evidence, to raise all valid defenses and, in case of conviction, to present all proper grounds for probation or mitigation of punishment. A confidential disclosure of guilt alone does not require a withdrawal from the case. However, after a confidential disclosure of facts clearly and credibly showing guilt, the lawyer should not present any evidence inconsistent with such facts. He should never offer testimony which he knows to be false.

(b) The crime charged should not be attributed to another identifiable person unless evidence introduced or inferences warranted therefrom raise at least a reasonable suspicion of such person's probable guilt.

(c) The prosecutor's primary duty is not to convict but to see that justice is done. Credible evidence that might tend to prove the accused's innocence should not be suppressed.

5. Acquiring Interest in Litigation

A lawyer should never purchase or otherwise acquire, directly or indirectly, any interest in the subject matter of the litigation which he is conducting, provided, however, that nothing herein shall prohibit a just and reasonable contingent fee contract.

6. Lawyer As Witness

When a lawyer knows, prior to trial, that he will be a necessary witness, except as to merely formal matters such as identification or custody of a document or the like, neither he nor his firm nor associates should conduct the trial. If, during the trial, he discovers that the ends of justice require his testimony, he should, from that point on, if feasible and not prejudicial to his client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the con-

duct of the trial, the lawyer should not argue the credibility of his own testimony.

7. Personal Experiments

A lawyer should never conduct or engage in experiments involving any use of his own person or body except to illustrate in argument what has been previously admitted in evidence.

8. Discretion in Cooperating with Opposing Counsel

The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments and admission of facts.

9. Relations with Opposing Counsel

(a) A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom. When he knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.

(b) A lawyer should avoid indulgence in disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. He should abstain from any allusion to personal pecularities and idiosyncracies of opposing counsel.

10. Witnesses

(a) A lawyer should thoroughly investigate and marshal the facts. Subject to the provisions of Paragraph 11 hereof, he may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of the opposing counsel or party. He should avoid any suggestion calculated to induce any witness to suppress evidence or deviate from the truth. He should avoid taking any action calculated to secrete a witness. However, except when legally required, it is not his duty to take affirmative action to disclose any evidence or the identity of any witness.

(b) A lawyer should not participate in a bargain with a witness either by contingent fee or otherwise as a condition of his giving evidence, but this does not preclude the payment of reasonable and non-contingent compensation for actual loss of time and expenses of persons who cannot afford to attend or will not appear and testify for the statutory fees; nor does it preclude payment of non-contingent fees to expert witnesses.

(c) A lawyer may advertise for witnesses to a particular event or transaction but not for witnesses to testify to a particular version thereof.

(d) A lawyer should never be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants, or ask any question intended only to insult or degrade the witness. He should never yield, in these matters, to suggestions or demands of his client or allow any malevolence or prejudice of the client to influence his actions.

(e) A lawyer should not ask questions which affect the witness's credibility only by attacking his character, except those encompassed in recognized impeachment procedures.

11. Communications with Opposite Party

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. He should avoid everything that might tend to mislead a party not represented by counsel, and he should not undertake to advise him.

12. Relations with the Judiciary

A lawyer should never show marked attention or unusual hospitality to a judge, uncalled for by the personal relations of the parties. He should avoid anything calculated to gain or having the appearance of gaining special personal consideration or favor from a judge.

13. Trial Conduct Toward Judge

(a) During the trial, the lawyer should always display a dignified and respectful attitude toward the judge presiding, not for the sake of his person, but for the maintenance of respect for and confidence in the judicial office. It is both the right and duty of the lawyer fully and properly to present his client's cause and to insist on an opportunity to do so. He should vigorously present all proper arguments against rulings he deems erroneous and see to it that a complete and accurate case record is made. In this regard, he should not be deterred by any fear of judicial displeasure or even punishment. The lawyer, regardless of fear, threat or imposition of punishment, should not reveal the confidences of his client.

(b) A lawyer should not discuss a pending case with the judge without the opposing lawyer's presence, unless, after notice, or request, the opposing lawyer fails or refuses to attend and the judge is so advised.

(c) Except as provided by rule or order of court, a lawyer should never deliver to the judge any letter, memorandum, brief, or other written communication without concurrently delivering a copy to opposing counsel.

(d) Subject to the foregoing, a lawyer may advise the judge of any reason for expediting or delaying the decision.

14. Jury

(a) A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, such as fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience, or the like. Before and during the trial, he should avoid conversing or otherwise communicating with a juror on any subject whether pertaining to the case or not.

(b) A lawyer should disclose to the judge and opposing counsel any information of which he is aware that a juror or a prospective juror has or may have any interest, direct or indirect in the outcome of the case, or is acquainted or connected in any manner with any lawyer in the case or any partner or associate or employee of the lawyer, or with any litigant, or with any person who has appeared or is expected to appear as a witness,

unless the judge and opposing counsel have previously been made aware thereof by voir dire examination or otherwise.

(c) It is the lawyer's right, after the jury has been discharged, to interview the jurors to determine whether their verdict is subject to any legal challenge.

(d) Before the jury is sworn to try the cause, a lawyer may investigate the prospective jurors to ascertain any basis for challenge, provided there is no communication with them, direct or indirect, or with any member of their families.

(e) A lawyer should, immediately upon his discovery thereof, make full disclosure to the court of any improper conduct by any person toward the jury or any member thereof.

15. Court Room Conduct

(a) In the voir dire examination of the jury, a lawyer should not state or allude to any matter not relevant to the case or which he is not in position to prove by admissible evidence.

(b) A lawyer should not state as fact in his opening statement any matter unless he has reason to believe that it will be substantiated by the evidence.

(c) A lawyer should never misstate the evidence or state as fact any matter not in evidence, but otherwise has the right to argue in the manner he deems effective, provided his argument is mannerly and not inflammatory.

(d) A lawyer should not include in the content of any question the suggestion of any matter which is obviously inadmissible.

(e) A question should not be interrupted by an objection unless the question is then patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

(f) A lawyer should conduct the voir dire examination and the examination of all witnesses either from the counsel table or other suitable distance except when handling documentary or physical evidence or when a hearing impairment or other disability requires that he take a different position.

(g) In all cases in which there is any doubt about the propriety of any disclosure to the jury, requests should be made for leave to approach the bench and to obtain a ruling out of the jury's hearing, either by making an offer of proof or by propounding the question and obtaining an immediate ruling.

(h) A lawyer should not assert in argument his personal belief in the integrity of his client or of his witnesses or in the justice of his cause, as distinct from a fair analysis of the evidence touching those matters.

(i) A lawyer should not engage in exchanges of banter, personalities, argument or controversy with opposing counsel. His objections, requests and observations should be addressed to the judge.

16. Court Room Decorum

(a) A lawyer should rise when addressing, or being addressed by, the judge, except when making brief objections or incidental comments.

(b) While the court is in session a lawyer should not smoke, assume an undignified posture, or, without the judge's permission, remove his coat in the court room. He should always be attired in a proper and

dignified manner, and abstain from any apparel or ornament calculated to attract attention to himself.

17. Punctuality and Expedition

(a) A lawyer should be punctual in all court appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case, of any circumstances requiring his tardiness or absence.

(b) A lawyer should make every reasonable effort to prepare himself fully prior to court appearance. He should promptly inform the court of any settlement, whether partial or entire, with any party, or the discontinuance of any issue.

(c) A lawyer should see to it that all depositions and other documents requiring to be filed are filed promptly, should stipulate in advance with opposing counsel to all non-controverted facts, should give opposing counsel, on reasonable request, an opportunity in advance to inspect all non-impeaching evidence of which the law permits inspection, and, in general, should do everything possible to avoid delays and to expedite the trial.

18. Candor and Fairness

(a) The conduct of the lawyer before the court and with other lawyers should at all times be characterized by candor and fairness.

(b) A lawyer should never knowingly misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or, with knowledge of its invalidity, cite as authority a decision that has been vacated or over-ruled, or a statute that has been repealed, or in argument assert as a fact that which has not been proved, or, in those jurisdictions in which a side has the opening and closing arguments, mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

(c) A lawyer should be extraordinarily careful to be fair, accurate and comprehensive in all ex parte presentations and in drawing or otherwise procuring affidavits.

(d) A lawyer should not offer evidence which he knows is inadmissible, and he should not endeavor to get the same before the jury in any manner. Neither should he include in an argument, addressed to the court, remarks or statements intended improperly to influence the jury or the public.

(e) A lawyer should not propose a stipulation in the jury's presence unless he knows or has any reason to believe the opposing lawyer will accept it.

(f) A lawyer should never employ dilatory tactics of any kind to procure more fees.

(g) A lawyer should never file a pleading or any other document which he knows to be false in whole or in part or which is intended only for delay.

19. Adverse Authorities

A lawyer should not attempt to mislead the court by citations of authorities he knows have been over-ruled or distinguished.

20. Publications re Pending Litigation

A lawyer should not publish, cause to be published, or aid or abet in any way, directly or indirectly, the publication in any newspaper or other documentary medium, or by radio, television or other device, of any material concerning a case on trial or any pending or anticipated litigation, calculated or which might reasonably be expected to interfere in any manner or to any degree with a fair trial in the courts or otherwise prejudice the due administration of justice. If extreme circumstances of a particular case require a statement to the public, it should not be made anonymously and no reference to the facts should go beyond quotation from the records and papers on file in court or other official documents, and no statement should be made which indicates intended proof or what witnesses will be called, or which amounts to comment or argument on the merits of the case.

21. Discovery of Imposition Or Deception

When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court, a party, or other counsel, he should promptly endeavor to rectify it.

22. Applicability

This Code of Trial Conduct applies to all lawyers, whether engaged in private practice or public employment.

MEMBERS OF THE JUNIOR BAR COUNCIL, which met March 11-12 in Lafayette, are shown at the home of Mr. and Mrs. J. Winston Fontenot. They are, seated (from left) William D. Brown, III, Monroe, vice-chairman; John W. Haywood, Shreveport, chairman; and Curtis Boisfontaine, New Orleans, secretary-treasurer; and standing, Louis D. Smith, Monroe; Thomas C. Wicker, Jr., New Orleans, past chairman; Jack Kaplan, Shreveport; J. Winston Fontenot, Lafayette, and Frank J. Stitch, Jr., New Orleans.

HEARD AROUND THE DISTRICTS

Law Firm Announcements

The New Orleans law firm of *Porteous and Johnson* announces the association of *Lloyd Cyril Melancon*. *Walter J. Landry* has opened his office for the general practice in New Orleans. *Baldwin and O'Hara* is the name of the new firm of *Edward M. Baldwin* and *Malcolm V. O'Hara,* New Orleans.

New Judgeships Bill Okayed

Five new federal judgeships for Louisiana and Mississippi are included in an administration-backed bill approved by a House judiciary subcommittee.

The bill, which must be approved by the judiciary committee and then the House and Senate, would add two district judges for eastern Louisiana, one each for western Louisiana and southern Mississippi, and an appeals court judge for the Fifth Circuit. Louisiana, Mississippi, Alabama, Florida, Georgia, Texas and the Panama Canal Zone comprise the Fifth Circuit.

The measure was reported to be aimed at helping relieve courts now overcrowded with pending cases.

New Orleans Federal Judges Cited

Judge Alfred P. Murrah, chief judge of the United States 10th circuit court of appeals, said recently that *Judges Herbert W. Christenberry* and *J. Skelly Wright* of the eastern district of Louisiana have disposed of more business "year in and year out by the use of pre-trial conferences" than judges of any other federal districts.

George R. Blue Named

Judges Christenberry and Wright, and George R. Blue, New Orleanian who was the Republican candidate for Congress from the Second Congressional district in 1956, have received appointments to committees of nationally-known judges, lawyers and legal scholars. Judge Christenberry has been named to the advisory committee on admiralty rules, Judge Wright to the standing committee on rules of practice and procedure, and Blue to the advisory committee on criminal rules.

Kudos and Appointments

Nicholas J. Gagliano, Metairie attorney who graduated as top man from Loyola in 1957 and taught a year on the law school faculty of Rutgers University, has been sworn in as an assistant United States attorney. He succeeds *Lloyd C. Melancon,* who resigned to return to private practice. *Charles J. Kohlmeyer, Jr.,* New Orleans, has been elected to the Dillard University board of trustees.

Baldwin Gets High Post

Cuthbert S. Baldwin, New Orleans attorney, was elected vice-chairman of The Fellows of the American Bar Foundation at the February meeting of the American Bar Association in Chicago. Baldwin is past president of the Louisiana and New Orleans Bar associations. The foundation, which fosters legal education and research, is composed of 632 lawyers from throughout the nation.

Law Day – USA – May 1, 1960

A PROCLAMATION for the observance of LAW DAY U. S. A. throughout Louisiana is presented by Governor Earl K. Long (center) to Fred A. Blanche (left), president of the Louisiana State Bar Association, as G. Dupre Litton, president of the Baton Rouge Bar Association (right), looks on. Since May 1, annual date of LAW DAY U. S. A., falls on a Sunday, observances on that day will center in the churches. But court ceremonies will be held May 2, as will various programs for service clubs, civic organizations and local bar associations. Mock trials, court house tours and special ceremonies at naturalization hearings will be presented.

Local bars throughout the state—like local bars the nation over—will spearhead observances of Law Day U.S.A. May 1, 1960.

This year May 1 falls on Sunday, so observances that day will naturally center in the churches.

Court ceremonies and school programs will mostly be held on Monday, May 2. Programs for service clubs and other organizations are scheduled for the regular meetings of those groups nearest to the official May 1 date.

Chief Justice John B. Fournet of the Louisiana Supreme Court will preside over ceremonies that will be held in the Supreme Court, beginning at 10:30 a.m., on Monday, May 2. The "Law Day Ceremonies," to be presented under the auspices of the Louisiana State Bar Association and the Orleans Bar Association, have been scheduled as part of the official civil docket of the Supreme Court for that date.

The many local bar associations throughout the state have already scheduled speaking engagements by their members at schools in their areas, before service clubs, and at community-wide meetings by various civic groups. Bar association members will conduct court house tours, mock trials, special ceremonies at naturalization hearings. Essay contests have been established on the United States' concept of freedom under law. and on the close relationship between American law and our traditional freedom to speak, worship, live as we choose, pursue the career of our choice.

Meet Your Board of Governors . . .

Clarence M. East, Jr., represents the Loyola University School of Law faculty on the board. He is serving his third term on the LSBA Board of Governors.

Born in New Orleans April 23, 1919, Mr. East was educated in the parochial schools of the city, Jesuit High school and Loyola University. He earned a bachelor of law degree in 1948 and a bachelor of Philosophy in 1949. Mr. East was president, while in the Loyola Law School, of the St. Thomas More Law Club, and he has been a member of the Loyola School of Law faculty since 1949.

During 1942-45, he was in the United States Army, serving with the Intelligence Service and the Transportation Corps.

Mr. East was a research assistant, during 1947-49, in the preparation of the Louisiana Revised Statutes of 1950. He subsequently served on the committees which drafted the admiralty rules for, first, the U. S. District Court, Western District of Louisiana, and later, the admiralty rules for the U. S. District Court, Eastern District of Louisiana.

Mr. East is presently a member of the Council of the Louisiana State Law Institute, and co-editor of the West Publishing Company's edition of the Louisiana Civil Code. He is a past contributing editor of the American Journal of Comparative Law.

Until January 1, 1960, he was chairman of the Jefferson Parish personnel board.

Mr. East is married to the former Dorothy Beckly of Louisville, Ky., and they reside with their four children—two boys and two girls —at 324 Ridgeway, Metairie.

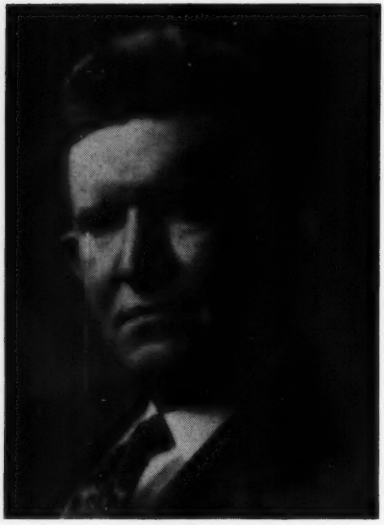
CLARENCE M. EAST, JR.

W. Ford Reese, the secretary-treasurer of the Louisiana State Bar Association, is an ex-officio member of the Board of Governors.

He is a past member of both the House of Delegates and of the Board of Governors of the L.S.B.A.

Mr. Reese, a member of the New Orleans law firm of Adams and Reese, was born October 1, 1917, in Nashville, Tenn. He received his early education in the New Orleans public schools and graduated from Fortier High school in 1935.

He won his bachelor of arts degree in 1939 and bachelor of laws degree in 1941, both from Tulane University. He is a member of Omicron Delta Kappa, Kappa Delta Phi and Phi Delta Phi fraternities.



W. FORD REESE

From 1941 to 1945, he served in the United States Navy and was discharged with the rank of Commander.

Mr. Reese is a past president (1953-54), vice-president and a member of the Executive Committee of the New Orleans Bar Association.

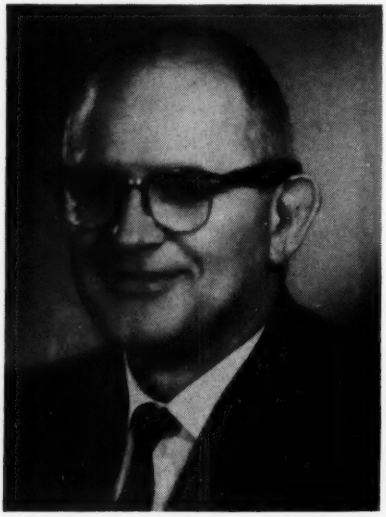
He is serving his second term as secretary-treasurer of the Louisiana State Bar Association.

Since 1954, he has been delegate of the Louisiana State Bar Association to the Fifth Circuit Judicial Conference.

Mr. Reese has served on numerous panels concerning the Tidelands and the list of L.S.B.A. committees on which he has served includes the Committee on Unauthorized Practice of Law and a Special Committee for the Revision of Appellate Jurisdiction.

He holds membership in the American Bar Association, the Federation of Trial Lawyers, International Association of Insurance Counsel, and the American Judicature Society. He is active in Tulane Alumni Association work.

Mr. Reese is married to the former Beverly Hess of Kansas City, Mo. She is a 1938 graduate of Newcomb College who received her bachelor of laws degree from Tulane in 1940. They reside in New Orleans with their four children.



A. LEON HEBERT

A. Leon Hebert is the delegate to the Board of Governors from the Sixth Congressional District. He is also president of the Baton Rouge Bar Association for 1960.

Mr. Hebert, a native of Shreveport, received his elementary education in public schools of that city and was graduated from Byrd High school in 1931. He attended Louisiana State University from 1931 through 1937 and was graduated with the bachelor of arts degree in 1934, the bachelor of laws degree in 1937. He is a member of the Phi Kappa Phi and Phi Delta Phi fraternities.

From 1943 through 1950, Mr. Hebert was a lecturer in the L.S.U. Law School. He served in the United States Army during 1944-45.

Mr. Hebert has engaged in the private practice of law in Baton Rouge since 1940. He was attorney for the Collector of Revenue, State of Louisiana from 1937 through 1943.

In 1937, he married Lorella Seal of Sicily Island, La. They reside, with their eight children, in Baton Rouge.

Mr. Hebert is a past president of the North Baton Rouge Lions Club. He was district governor of Lions International District 8-N, 1953-54.

A Catholic, Mr. Hebert is a 4th degree Knights of Columbus, Council 969.

Tulane Sets Engineering - Law Seminar

The Louisiana Engineering Society and the Louisiana State Bar Association are jointly sponsoring an engineering-law seminar that will be held on the Tulane University campus the latter part of May.

Co-hosts are the schools of engineering and law at Tulane.

Seniors in those schools, as well as members of the L.E.S. and the L.S.B.A., are invited to attend the all-day one-day session.

A nominal admittance fee will be charged to cover attendance at a morning and an afternoon session, and at luncheon. There will be a reduced charge for students.

The seminar is designed to promote mutual understanding among attorneys and engineers in the pursuit of their respective professions for the ultimate benefit of the public, (a spokesman said.)

A planning committee which met last fall at Tulane set up this spring seminar and outlined the following aims:

(1) To acquaint the student engineer and the graduate professional engineer with a working knowledge of the legal aspects of the engineering profession.

(2) To provide the law student and the legal fraternity with a corresponding knowledge of the engineering profession and its problems which might entail legal assistance.

(3) To broaden the area of contacts between the legal and engineering professions.

(4) To assist law and engineering faculties in developing studies within their respective curricula of current professional trends.

Among members of the planning committee are Edward A. McLellan, representing the L.E.S.,; W. W. Thimmesch, executive secretary of the L.S.B.A.; Lee H. Johnson, dean of the Tulane College of Engineering; Professor Walter E. Blessey, head of Tulane's civil engineering department; Ray Forrester, dean of the Tulane College of Law; Professor Ralph Slovenko of the Tulane College of Law; Horace Renegar, Tulane's public relations director, and Allen Johnson, public relations counsel for L.E.S.

Chairman of the L.E.S. Agenda Committee is Frank Riess, American Marine Corp., representing industry.

Other agenda committee members include Clayton Nairne, New Orleans Public Service Inc., representing utilities; Waldemar S. Nelson, Bedell and Nelson Engineers Inc., consultants; Col. William H. Lewis, Board of Commissioners, Port of New Orleans, government; Professor Walter E. Blessey, universities, and Robert Gosa, Williams-McWilliams Industries, representing contractors.

Unauthorized Practice By Insurance Adjusters

(The matter of the unauthorized practice of law by insurance adjusters has long been a matter of serious consideration by representatives of the legal profession and of the insurance and adjusting industries. The Committee on Unauthorized Practice of the Law of the Louisiana State Bar Association has for some years concerned itself with the problems involved. The article which follows is published here at request of that committee, and addresses itself to the entire membership of the association.)

The association's Committee on the Unauthorized Practice of Law is composed of eleven practicing attorneys—one representative from each of the Congressional Districts and three "at large" members. This group meets four or more times annually at the Association's office in New Orleans; and it has the continuous assistance of the Executive Counsel.

The committee does not and cannot seek out offenders, for it has no staff of investigators and no paid employees. Neither do its members hover over the state prepared to pounce upon any creature who might, through ignorance, invade the domain of the lawyer. The committee acts only upon specific complaints of specifically alleged violations by specific persons; and the nature of its action depends upon the nature of the offense. Moreover, it studiously declines to act upon any complaint which does not fall clearly within its jurisdiction—the practice of law, as defined by statute, by persons or organizations not licensed to do so; or the doing of any act proscribed by that statute.

R. S. 37:212, *et. seq.*, defines the practice of law and prohibits the doing of certain acts by unauthorized persons. A mere reading of this statute demonstrates the futility of any effort to enumerate all acts falling within its proscription, and the impossibility of ferreting out every violator. Complaints filed with the committee concern activities in every phase of commercial life. They present illustrations of maliciously-conceived, deliberate attempts to dupe the public, of obviously lawful activity being erroneously reported, and of the entire gamut between these extremes.

Activity in one field, however, repeatedly and regularly comes to the attention of the committee. On the agenda of every meeting there appears at least one complaint against an insurance adjuster; and at most meetings, several such complaints are considered. From the nature of these complaints, and their frequency, the committee has drawn two definite conclusions—that the unauthorized practice of law by insurance adjusters is widespread and often flagrant; and that most adjusters *and* attorneys are either unaware of the provis-

The members of the Committee on unauthorized Practice of the Law are James H. Drury, Chairman, Walter G. Arnette, Robert T. Farr, Leonard Fuhrer, Howard B. Gist, Jr., Tom L. Horne, Jr., Iddo Pittman, Jr., John R. Pleasant, Russell Schoneas, G. William Swift, Jr., and Arthur J. Waechter, Jr.

ions of our statute, or do not fully understand them.

Surely, it is universally agreed that appearance in court, as an advocate, constitutes the practice of law, so we have no difficulty with adjusters in this connection. But consider sub-section (2) of R. S. 37:212! If anyone, for a consideration, reward, or pecuniary benefit, performs one of the following acts, he is practicing law:

"(a) the advising or counseling of another as to secular law or

(b) in behalf of another, the drawing or procuring, or assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights, or

(c) the doing of any act, in behalf of another, tending to obtain or secure for the other prevention or the redress of a wrong or the enforcement of establishment of a right."

R. S. 37:213 lists certain activities prohibited by an unlicensed person as follows:

"(1) Practice law;

(2) Make a business to solicit employment for a lawyer;

(3) Furnish attorneys or counsel or an attorney and counsel to render legal services;

(4) Hold himself out to the public as being entitled to practice law;

(5) Render or furnish legal services or advice;

(6) Assume to be an attorney-at-law or counselor-at-law.

(7) Assume, use, or advertise the title of lawyer, attorney, counsellor, advocate, or equivalent terms in any language, or any phrase containing any of those titles, in such manner as to convey the impression that he is a practitioner of law; or

(8) In any manner, advertise that he, either alone or together with any other persons, has, owns, conducts, or maintains an office of any kind for the practice of law."

Simply scanning these provisions leads one to an obvious conclusion. At the outset, it is abundantly clear that this statute is not concerned with (and this committee has no jurisdiction over) acts or practices which are unethical, immoral, in "bad conscience" or distasteful, however reprehensible they might be. Thus, the committee has carefully declined to consider (and will continue to do so) complaints against insurance adjusters of which the following are illustrative:

(1) Taking a release for inadequate consideration;

(2) Misrepresenting the facts in a statement;

(3) Maligning an attorney's ethics or ability;

(4) Contracting a claimant without the attorney's

knowledge or consent, or generally ignoring his representation;

(5) Persuading a claimant to discharge an attorney in order to effect an immediate settlement;

(6) Urging a claimant to refrain from employing an attorney by devious means, such as pointing out the "net" after the "lawyer's cut" of any recovery.

Further reference to Section 212 reveals another provision very pertinent to this problem. The statute does not prohibit any person "from attending to any caring for his own business, claims or demands . . ." By their very nature, insurance companies deal continuously with persons making claims against them, seeking some of their money. The handling of such claims comprises a large part of the business of the companies; and many of them employ, on their own payroll, as direct employees, adjusters who handle claims against one company only — their employer. Since a corporation or association can act for itself only through its employees, it follows that the Committee is obliged to make a distinction between company adjusters and the so-called "independent" adjusters.

This does not mean, of course, that any act by a company adjuster is permissible under the statute. Manifestly, if such a person not licensed as an attorney in Louisiana appears in court, or advises a claimant as to secular law, or prepares a legal document on behalf of anyone but his employer, or does any act of this nature for another than his employer—he is practicing law.

However, it is the opinion of the committee that *when acting as the personification of his inanimate employer,* a company adjuster may lawfully fill in and obtain execution of releases, assignments and other legal documents, previously prepared by attorneys and reduced to printed forms, or determine and state his company's legal position, or evaluate claims or negotiate settlements. In brief, he may so perform any act in his employer's behalf which any natural

person is permitted to do for himself.

Independent Adjusters

Independent adjusters, or those who are in the business of handling on a fee basis claims being asserted against various or several insurers, are acting for another in everything they do. They are either self-employed or employed by an *adjusting* company to act on behalf of *another* company. Accordingly, it is the opinion of the committee that the statute permits only narrowly confined activity by such persons. They may only investigate occurrences, learn and pass on to their "principal" the pertinent facts, transmit information and instructions between the company and the claimant (or the latter's attorney) or fill in prepared forms. In the committee's view, they may not lawfully perform any of the following acts:

(1) Advise either the insurer or the claimant as to legal conclusions, or interpretations drawn by themselves, either as to liability, coverage, or value;

(2) Draft or prepare legal documents such as releases, assignments or subrogation instruments;

(3) "Negotiate" settlements, when this activity involves their own evaluation as to the amount of the claim;

(4) Interpret, cite or otherwise refer to decisions of the courts or legal writings, except when provided to them by the insurer or the adverse party in the specific claim being handled.

Clearly, the above summary does not cover every act which might be performed, nor is it so intended. Admittedly, there is an infinite variety of situations wherein either a company or independent adjuster might transgress; and many activities of such persons fall within what might be called the "gray zone". For these reasons, the task of the committee is a difficult one. In fact, without the informed and complete cooperation of all attorneys, the proper enforcement of the statute is impossible.

Violation Widespread

As previously stated, the committee is convinced that violation of the statute by many adjusters, particularly the independents, is widespread. There is no agency or organization having supervisory control over these persons with whom the committee can deal. Few complaints, if any, are received from the claimants or policyholders who are the real victims—the persons for whose protection the committee is directly and almost wholly dependent upon the attorneys.

The committee therefore urges each and every attorney in the state of Louisiana to consider the contents of this article carefully and to assist it in the enforcement

Swears In Father

J. Donald Aaron, Sr., of Crowley was given his oath of office as judge in the 15th judicial district by *J. Donald Aaron, Jr.*, recently. Presiding judges gave the younger Aaron permission to administer the oath. Judge Aaron succeeds the late *Judge N. Smith Hoffpauir.*

of the statute. It is *your* duty to yourself, your fellow attorneys and the public at large which you can perform by:

(1) Studying the statute carefully and having its contents and purpose constantly in mind;

(2) Realizing that the statute was enacted primarily for the protection of the public from the activities of persons not schooled in the law and not regulated in conduct, rather than to enhance the earning power of attorneys;

(3) Understanding that, within their proper sphere, insurance adjusters perform a very valuable and necessary service for the insurance industry, the legal profession and the public as a whole, and refraining from the too-prevalent attitude of classifying all of them as "charletans";

(4) Considering, in your relations with adjusters, the provisions of Canon 45 (Revised Statutes, Vol. 21, page 403) concerning the aiding of unauthorized practice;

(5) Giving publicity to the opinions of the Committee in this field;

(6) Discussing the problem intelligently at gatherings of your local bar association;

(7) Reporting to the Committee all *known* instances of violations, or activities which you think the Committee should consider for opinion (being careful to present only the *facts* of *specific* occurences, not rumors or general complaints).

(8) Being *professional* in all thoughts and acts concerning this problem.

This article is neither conceived nor intended to be interpreted as a comprehensive review of the problem. It should not be cited as the exclusive listing of permissive or prohibited acts by insurance adjusters; and it recognizes the necessity for caution to avoid arbitrary indictment or deliberate stifling of a growing and valuable institution of the present day. The purposes here are to acquaint the members of the bar with a problem the committee feels is becoming progressively more serious, to express the broad outlines of the statute and to urge the active assistance of all attorneys. Future activity in this field and the ultimate results achieved are to be determined largely by *you*, the individual lawyer!

Federal Bar Elects

Ralph L. Kaskell, Jr., has been elected president of the New Orleans chapter of the Federal Bar Association, succeeding *Dr. Brendan F. Brown. Miss Kathleen Ruddell* was voted secretary-treasurer and *Keith J. Bruner* and *Julian H. Good*, vice-presidents. Board members are *Theodore W. Thompson, Maj. Sylva M. Landress, Lloyd C. Melancon* and *Bernard Marcus.*